IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 253 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NELSON COUTO & ANR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 253 of 1994

MR MA KALATHIL for Petitioner No. 1-2

MR SUDHANSHU PATEL, APP for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 02/04/2002

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Kalathil for the petitioners accused and ld. APP Mr. Sudhanshu Patel for the State. On the strength of the complaint filed by one Thavarbhai Malubhai Rathava of village Rinchhia, Ta:

Devgadh Baria, District : Panch Mahals against the present petitioners in the Court of ld. Judicial Magistrate (F.C.), Halol for the offences punishable under Section 420 of IPC and under Sections 3(1)(x) of The Scheduled Castes & The Schedule Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the Atrocities Act) and under Section 32(2) of Gujarat Secondary Education Act, 1972. Case has been registered being Inquiry Case No. 86/1993. The complaint was sent for investigation under Section 156(3) CrPC. Ultimately, after inquiry, police chargesheeted the present petitioners for the above offences.

2. As one of the offences allegedly committed by the petitioners was triable by the Court of Sessions,i.e. offence under the Atrocities Act, the case was transmitted to the Court of Sessions, Panch Mahals at Godhara and same was registered as Atrocity Case No.10/1994. When Atrocity Case came up for framing of charge before the ld. Special Judge, the present petitioners, through their ld. counsel applied for their discharge from the charges levelled against them vide application exh.2. Ld. Sessions Judge, after hearing the ld. counsel appearing for the parties, rejected the application for discharge vide order dated 4.6.1994. Feeling aggrieved by the said order, this Criminal Revision Application is preferred by the present petitioners.

3. I have considered the oral submissions made by ld. counsel Mr. Kalathil for the petitioners. This Court is satisfied that none of the facts reflected in the complaint or papers of investigation would attract offence punishable under Section 3(1)(x) of the Atrocities Act. I would like to quote relevant Clause (x) of Section 3(1) of the Atrocities Act:

"3. Punishments for offences of atrocities.-
(1) Whoever, not being a member of a Scheduled Caste or Scheduled Tribe,--
xxx xxx xxx xxx
(x) intentionally insults or intimidates with intent or humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view; "

4. Accepting the case of the complainant as it is, there is no element either of insult or humiliation to a tribal within the meaning of the said provisions.. The grievance of the complainant before the trial Court was that the school management had not guided his son

properly and ultimately when son of the complainant was intending to switch over to some other school, school authorities had refused to issue School Leaving Certificate on various attempts. It is specifically pleaded by the complainant at the relevant point of time that the son of the complainant studying in the school run by the petitioners,which was not approved institute within the meaning of the provisions of The Gujarat Secondary Education Act. So, there is no element of the offence punishable under Atrocities Act. Ld. Special Judge has not applied his mind towards this aspect of the matter.

5. So far as the offence of cheating punishable under Section 420 of the IPC is concerned, ld. Special Judge ought to have held that there is no prima facie case and there is nothing specifically stated in the complaint itself that the complainant or his minor son studying in the school of the petitioners were induced to pay any donation or amount to get admission. It is also not stated that Institute was levying any tuition fees. The factum of wrongful gain or wrongful loss to the either side is also not brought on record. In view of the provisions of Sections 415, 420 of the IPC, it is rightly submitted that the element of cheating as defined under the IPC is missing and ld. Special Judge ought not to have decided to charge the present petitioners for the said offence. The ld. Spl. Judge ought to have discharged the petitioners from this offence also. The findings of the ld. Special Judge are absolutely non-speaking and without recording reasons in support thereof and, therefore, the same shall have to be turned down. On the contrary, this Court feels that ld. Special Judge ought to have discharged the present petitioners from the offences punishable under Section 420 IPC and Section 3(1)(x) of Atrocities Act. To that extent, present Revision Application requires to be allowed.

6. So far as offence punishable under Section 32(2) of the Gujarat Secondary Education Act is concerned, it is submitted by ld. counsel Mr. Kalathil that Sec.32(2) is wrongly mentioned in the chargesheet and there is no such penal provision in the Act. It appears that Sec.32(2) of the Act is wrongly mentioned and proper penal section would be Section 31(1) R/w Section 42 of the said Act. However, incorrect mention of the section in the chargesheet would not entitle the accused persons to get discharge from the offence for which they can be legitimately prosecuted. Hence, so far as offence punishable under Section 31(1) R/w Section 42 of The

Gujarat Secondary Education Act is concerned, the petitioners are relegated to the Court concerned for trial. It will, however, be open for the petitioners to satisfy the Court concerned that private complaint for the offences under Section 31(1) R/w Section 42 of the Act would not be maintainable and they are entitled to be discharged.

7. For the reasons aforesaid, Criminal Revision Application is partly allowed. The present petitioners-accused are hereby discharged and acquitted for the offences punishable under Section 420 IPC and Section 3(1)(x) of Atrocities Act. So far as offence punishable under Section 31(1) R/w Section 42 of The Gujarat Secondary Education Act is concerned (wrongly mentioned as Section 32(2) of the Act), petitioners are relegated to the Court concerned for trial. It will, however, be open for the petitioners to satisfy the Court concerned that private complaint for the aforesaid offence would not be maintainable and that they are entitled to be discharged, by making appropriate application. If such application is made by the present petitioners, then the same shall be heard and decided on merits and in accordance with law without being influenced by the earlier order passed in this matter.

8. Rule is made absolute accordingly. Yadi to the concerned Court.

02.04.2002 [C.K. BUCH, J]
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